

(1) The nature and objective of the advertisement, solicitation, or other communication, and the circumstances under which they were presented;

(2) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(3) The prior history of the individual, organization, or entity in their willingness or refusal to comply with informal requests to correct violations;

(4) The history of prior offenses of the individual, organization, or entity in their misuse of program words, letters, symbols, and emblems;

(5) The financial condition of the individual or entity; and

(6) Such other matters as justice may require.

(c) In cases brought under section 1140 of the Social Security Act, the use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs will not be considered as a mitigating factor in determining the amount of a penalty in accordance with § 498.106.

§ 498.107 [Reserved]

§ 498.108 Penalties not exclusive.

Penalties imposed under this part are in addition to any other penalties prescribed by law.

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty;

(2) A description of the incident(s) with respect to which the penalty is proposed;

(3) The amount of the proposed penalty;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without right of appeal.

(b) Any person upon whom the Office of the Inspector General intends the imposition of a penalty may request a hearing on such proposed penalty.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty becomes final.

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109, the Office of the Inspector General may seek the proposed penalty, or any less severe penalty. The Office of the Inspector General will notify the respondent by certified mail, return receipt requested, of any penalty that has been imposed and of the means by which the respondent may satisfy the amount owed.

§§ 498.114–498.125 [Reserved]

§ 498.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the administrative law judge or the Commissioner, at any time prior to a final determination. Thereafter, the Commissioner or his or her designee has such exclusive authority.

§ 498.127 Judicial review.

Section 1140 of the Social Security Act authorizes judicial review of a penalty that has become final. Judicial review may be sought by a respondent only in regard to a penalty with respect to which the respondent requested a hearing under § 498.200ff of this part, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

§ 498.128 Collection of penalty.

(a) Once a determination has become final, collection of any penalty will be the responsibility of the Commissioner or his or her designee.

(b) [Reserved]